

Minutes Tempe Police Public Safety Personnel Retirement System Board Meeting August 3, 2017

Minutes of the Tempe Police Safety Personnel Retirement System (PSPRS) Board meeting, held on Thursday, August 3, 2017, 2:00 p.m., Tempe City Hall, third floor conference room, 31 E. 5th Street, Tempe, Arizona.

Board Members Present:

Steven Methvin
Rob Ferraro
James Foley
Bill Goodman

Board Members Absent:

Alex Moreno

City Staff Present:

Renie Broderick, Internal Services Director
Chris Hansen, Risk Manager
Wendy Messina, HR Program Coordinator
Susan Buck, Executive Assistant

Legal Counsel Present:

Cynthia Kelley

Chair Steven Methvin called the meeting to order at 2:17 p.m.

ITEM I – Consideration of Meeting Minutes:

Motion by James Foley to approve the July 6, 2017 Police PSPRS Board Meeting Minutes; second by Rob Ferraro.
Motion passed on a voice vote 4-0.

ITEM II – Public Appearances:

There were no public appearances.

ITEM III – Motion to Adjourn to Executive Session:

Motion by Steven Methvin to adjourn to Executive Session; second by Rob Ferraro. Motion passed on a voice vote 4-0.
The Board adjourned to Executive Session at 2:18 p.m. The Board meeting reconvened at 2:33 p.m.

ITEM IV – Prior Service (Acknowledgement only; no formal action was taken):

The Board acknowledged the following prior service:

- Shelli Miller, 0.644 years – Arizona State Retirement System (ASRS)
- James Welling, 0.038 years - ASRS

ITEM V – Application to Enter into the Deferred Retirement Option Plan (DROP) Program:

Motion by James Foley to approve the applications of **Todd C. Bailey** and **Michael L. Horn** to enter into the Deferred Retirement Option Plan (DROP) Program; second by Rob Ferraro. Motion passed on a voice vote 4-0.

ITEM VI – Retirement Applications:

Motion by Rob Ferraro to approve the following retirement applications:

- **Lisa E. Ball**, Normal Retirement – retirement date of 9/28/17
- **Kelly J. McMenemy**, Retirement from DROP – retirement date of 9/18/17
- **Ross L. Thompson**, Retirement from DROP – REVISED retirement date of 7/26/17

Second by Bill Goodman. Motion passed on a voice vote 4-0.

ITEM VII – Application for Survivor's Benefits:

Motion by James Foley to approve the application for Survivor's Benefits of **Joanne Christensen**, surviving spouse of **Richard Christensen**; second by Bill Goodman. Motion passed on a voice vote 4-0.

ITEM VIII – Hearing on Application for Accidental Disability Benefits (Edward J. Ouimette):

Chair Methvin noted the initial hearing for Mr. Ouimette was held on May 4, 2017 and the Board has now received the Independent Medical Exam (IME) from the medical board. Chair Methvin stated that the Board must determine whether the medical and other documentation submitted to the Board by Mr. Ouimette is sufficient to make a determination on his application.

Chair Methvin asked if anyone wished to address the Board; no one did so. Chair Methvin then opened the item for the Board's discussion; there was none.

Motion by Rob Ferraro to approve the application for Accidental Disability Benefits of **Edward J. Ouimette** based on the IME report; second by Bill Goodman. Motion passed on a voice vote 4-0.

Chair Methvin read the following from the form P5-LB-A and the Board verbally answered them for the record:

1. Did the employee file the application after the disabling incident, or within one year of ceasing to be an employee? **YES**
2. Did (or will) the employee terminate by reason of a disability? **YES**
3. Did employment terminate based on a disciplinary issue? **NO**
4. If the member's period of DROP has ended, if applicable, did (or will) the employee terminate by a reason of disability? **NO** (Note: The Board discussed that this question is not applicable, since Mr. Ouimette is not in DROP. However, staff has previously been instructed by the State Administrator's Office that "N/A" is not an acceptable response.)
5. Is the employee still working a position within their job classification that the Local Board considers a reasonable range of duties positions? **NO**
6. Has the employee refused a position within their job classification that the Local Board considered a reasonable range of duties? **NO**
7. Did the injury or condition occur prior to the current PSPRS membership date? **NO**
8. Was the injury or condition the result of an event incurred during the performance of the employee's duty? **YES**

Chair Methvin thanked Mr. Ouimette and his wife for their attendance at the hearing. Wendy Messina, HR Program Coordinator, stated that she would meet with Mr. Ouimette after the Board meeting to complete processing of his application.

ITEM IX – Re-Hearing on Application for Accidental Disability Benefits (Matthew G. Murray):

Chair Steven Methvin stated that the initial hearing on Mr. Murray's application was held on April 6, 2017 and his claim was denied. Mr. Murray filed for a rehearing, which was held on June 1, 2017 and continued pending submittal of additional information requested by the Board. At today's rehearing, the Board must determine whether the additional information submitted is sufficient to set aside the Board's initial denial and conclude that the statutory pre-requisites are satisfied to send Mr. Murray for an Independent Medical Exam.

Local Board Secretary Renie Broderick stated that staff and the claimant provided the additional items requested by the Board. The additional items were included in the Board's meeting packet, as follows:

- executive summary of any and all disciplinary investigations;
- an overtime report generated by Human Resources;
- updated Worker's Compensation claims or records submitted since the initial disability application;
- counseling records;
- additional medical records since the initial disability application was submitted.

Chair Methvin asked if anyone wished to address the Board. Dale Norris, Legal Counsel for Mr. Murray, stated the records submitted to the Board provide substantial evidence of Mr. Murray's disability. Mr. Norris noted that the Board's initial denial was because there was no evidence submitted from a medical doctor (M.D.). Mr. Murray has since submitted an opinion from his psychiatrist (M.D.) stating that Mr. Murray is permanently disabled due to PTSD (post-traumatic stress disorder) and noted that the Board has sufficient evidence to overcome the initial denial and move to send Mr. Murray for an IME.

Boardmember Rob Ferraro made the following comments for the record:

1. The Board should not try to differentiate between a medical and a psychiatric exam. The evidence submitted shows that three licensed psychiatric professionals have diagnosed PTSD.
2. PTSD is a significant and growing factor in policing; destructive behavior can be a symptom of PTSD.
3. The Board should utilize the existing IME process to determine what factors contributed to his illness, whether it is policing, prior military service or personal history. Mr. Murray's overtime history may or may not be relevant. The most up to date standard, DSM-5, should be used in the psychiatric evaluation, not DSM-4.
4. This claim brings into focus how employees are treated; the City's Employee Assistance Program is the same for all employees and there is no Police psychologist on staff.
5. It is a moral responsibility to send Mr. Murray for an IME to determine if the police shoot-out contributed to his PTSD.

Boardmember James Foley asked staff to read to the Board the reason for disability as stated on Mr. Murray's application for accidental disability. Susan Buck, Executive Assistant, stated that the application lists the following:

- Nature and Cause of Disability: Officer Involved Shooting; Posttraumatic Stress Disorder (DSM-5; 309.81)
- Date of Disability Event or Condition Diagnosis: 2-10-08

Board Legal Counsel Cynthia Kelley stated that in his resignation letter to the City, Mr. Murray stated a reason for leaving as post-traumatic stress and other personal life issues. The Board generally discussed the IME process.

Chair Methvin asked Mr. Norris if Mr. Murray was diagnosed with PTSD by a licensed professional prior to resigning from the City. Mr. Norris stated that October 2016 was the first time that any doctor mentions PTSD. Chair Methvin clarified that this diagnosis was made during the time that the Police internal investigation of Mr. Murray was being conducted. The Board discussed the timeline of events and evidence provided. Chair Methvin asked if Mr. Murray made the City aware of his PTSD prior to resigning. Mr. Norris stated that he did not, but noted that Mr. Murray told the chaplain assigned to Tempe Police in a confidential discussion. Chair Methvin noted that Mr. Murray was under investigation by the Police Department, but did not disclose his PTSD to the department to explain his behavior; instead, he waited until he resigned before bringing it forward, seemingly as a cover for inappropriate behavior. Mr. Norris provided a synopsis of the timeline of the medical evidence provided to the Board. Mr. Norris noted that Mr. Murray applied for FMLA and read the December 2016 FMLA form completed by the psychologist, which stated there were PTSD symptoms and listed those symptoms.

The Board discussed the overtime records provided which show 1500 hours of overtime worked over a 5-year period. Mr. Norris stated that the report does not show if the overtime was requested, mandatory or if it was a result of finishing up an arrest at end of shift. The Board generally discussed the overtime process in the Police Department.

Chair Methvin questioned why Mr. Murray did not notify the Police Department that he was struggling with PTSD, in order to obtain help and as a mitigating factor in the investigation. Mr. Norris stated that it is seen as a weakness for police officers to explain that they need help. The Board discussed the timeline of medical diagnosis and the Police investigation of Mr. Murray. Boardmember Foley noted that the Board denied Mr. Murray's initial hearing in April 2017 due to a lack of

medical evidence (from an M.D.) submitted to the Board. Ms. Kelley stated that the letter submitted to the Board from Dr. Prince diagnosing Mr. Murray with PTSD states that he began treating Mr. Murray on April 21, 2017. Risk Manager Chris Hansen noted that the form submitted by Dr. White (psychologist) to the Industrial Commission states that she began treating Mr. Murray on January 2, 2017 with a "date-disability-began" of January 4, 2017, which is the date that Mr. Murray resigned from the City.

Mr. Norris referred the Board to the memorandum he previously submitted stating that the scope of the rehearing should be limited to whether there is sufficient medical evidence. Ms. Kelley stated that the Board can consider anything relevant to the claim for accidental disability.

Motion by Rob Ferraro to approve sending Mr. Murray for an Independent Medical Exam (IME) and have the results of the examination sent to the Board; second by Bill Goodman. Chair Methvin voted against the motion, explaining there is not enough evidence and that Mr. Murray should have brought his PTSD to the attention of the Police Department prior to resigning. Motion passed 3-1 on a voice vote.

Boardmember Bill Goodman stated that the questions submitted to the IME doctor should be specific enough to answer some of the Board's questions. Ms. Kelley stated that the Board can submit questions to the Local Board Secretary, Ms. Broderick, who can then forward them to her for legal review. Ms. Broderick requested the questions be submitted to her by Monday, August 7, 2017. Once the questions have been reviewed by Ms. Kelley, the questions will be provided to staff to include with the documents to be provided to the IME doctor.

ITEM X: Future Meeting Date:

The next meeting is September 7, 2017.

ITEM XI: Future Agenda Items:

There were no future agenda items discussed.

Adjournment

Motion to adjourn by James Foley; second by Bill Goodman. Motion passed on a voice vote 4-0. The meeting adjourned at 3:20 p.m.



Renie Broderick
Local Board Secretary